



## **DUBLIN SOLICITORS' BAR ASSOCIATION**

### **SUBMISSION TO LEGAL SERVICES REGULATORY AUTHORITY**

**February 2021**

**AS PART OF A PUBLIC CONSULTATION PRIOR TO THE MAKING BY THE  
AUTHORITY OF ITS (SECOND) REPORT TO THE MINISTER FOR JUSTICE &  
EQUALITY IN RELATION TO ADMISSION POLICIES TO THE LEGAL  
PROFESSION**

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## SUBMISSION BY DUBLIN SOLICITORS' BAR ASSOCIATION

### IN RESPONSE TO THE PUBLIC CONSULTATION BY THE LEGAL SERVICES REGULATORY AUTHORITY PRIOR TO THE MAKING OF ITS (SECOND) REPORT TO THE MINISTER FOR JUSTICE & EQUALITY IN RELATION TO ADMISSION POLICIES TO THE LEGAL PROFESSION

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#### BACKGROUND

The Dublin Solicitors Bar Association [DSBA] which was established in 1935 is the largest independent association of solicitors in Ireland, with a membership of over 3,000 practitioners. Our membership includes solicitors firms of all sizes from the sole practitioner to the largest firms in Ireland.

The DSBA is solely a representative and educational body for solicitors, and does not have any regulatory function. The DSBA is the largest independent provider of continuous professional development courses for solicitors in Ireland, averaging three full CPD seminars per month as well as numerous smaller CPD events.

The DSBA operates an annual means-assessed Bursary available to those who wish to qualify and practice as solicitors in the Dublin area. The Bursary aims to assist with the fees and living expenses involved in undertaking the required training courses to become a solicitor. The size of the award will vary depending on individual circumstances, and is aimed at facilitating entry into the solicitors' profession for those who have little financial resources.

The DSBA is thus well placed with an independent voice, to provide a commentary on the admission policies in the State applicable to persons who wish to become and practice as solicitors. We do not in this Submission comment on the admission policies in the State applicable to persons who wish to become and practice as barristers.

The Legal Services Regulatory Authority [the Authority] has invited submissions as part of a public consultation prior to a report (being its second report) to the Minister for Justice and Equality pursuant to the obligations of the Authority under Section 33 of the Legal Services Regulation Act 2015 [2015 Act] in relation to admission policies of the Legal Professions.

For the purposes of this Submission, we have sought the views of our Council, all of whom are experienced practicing solicitors. We have also considered the following:

- *DSBA Submissions on Education and Training Arrangements for Solicitors* as made by the DSBA to the Authority [2018];
- *Solicitor Education in Ireland Review Report* by Ching, Crewe and Maharg as commissioned by the Law Society of Ireland [2018];
- *Pathways to the Professions Report* made by the Authority [2019];
- *Setting Standards Report* made by the Authority [2020]; and
- *Admission Policies Consultation Paper* herein of the Authority [2020]

The focus of the within Submission is on each of the five subject matter topics set out on page 2 of the Consultation Paper, and as addressed herein in the same numeric order.

## 1. Level of demand for the services of practicing solicitors in 2020

2020 was an exceptional year in terms of the difficulties experienced by everyone due to the once-in-a-century pandemic caused by the Covid-19 virus.

Amongst the solicitors' profession, much like everyone else in the general population, many have become ill through contracting Covid-19 and some are suffering from the long-term effects. A few of our colleagues have passed away or lost loved ones due to the virus. Many colleagues have had a salary cut and some have lost their jobs. There isn't a solicitors' firm in the country that has not been significantly affected by the pandemic. Due to the severe restrictions on court sittings, many solicitors must have suffered a decrease in their volume of work.

According to the Smith & Williamson 9<sup>th</sup> Annual Survey of Law Firms in Ireland 2020/2021 nearly two thirds of law firms have recorded a decline in revenue over the past year, on average down 10% amongst the top 20 law firms and amongst other firms on average down by 20% or more. That decline coupled with continuing fixed costs may have resulted in a sharp dip in profitability for many law firms.

That said, it has been very helpful to solicitors that legal services have been categorized as 'essential services' for Covid-19 regulatory purposes, as have the Government wage and commercial rates related supports.

Separately, solicitors have adapted to the restrictions necessitated by the pandemic and using technology and other innovations they were in a position to carry on with their work. Consequently, solicitors have been in a position to respond to the demand of the public for their services.

The continuing demand for solicitors has resulted in a steady flow annually of new entrants to the profession, with on average over the last 20 years around 420 solicitors qualifying each year<sup>1</sup>. Thus, supply currently appears to be well matched with demand.

## 2. The costs of legal services in 2020 and whether these were available at a reasonable cost to consumers

There are 2,325 solicitors' firms in the country, about two-thirds of them in Dublin. There is ample competition and choice for the consumers of legal services especially with regard to residential conveyancing, will-writing and probate.

That said, the demand for legal services is often beyond the reach of some, particularly with regard to litigation. This is evidenced by the number of the public acting *pro se*<sup>23</sup>

The Civil Legal Aid system will only help those on a very basic income, far below the average industrial wage and they have over 17,000 applicants every year<sup>4</sup>. Many legal firms in Ireland

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<sup>1</sup> Save those admitted from other jurisdictions.

<sup>2</sup> About one-third of applications to the Court of Appeal are made by Applicants in person – see Courts Services Annual Report 2019

<sup>3</sup> See report carried out by Centre for Housing Law, Rights and Policy NUI Galway, *Study on Mortgage Possession Courts Lists in Ireland*, May 2020 which showed that only 25% of litigants in possession cases had legal representation, much of it, pro-bono

<sup>4</sup> See annual report of Legal Aid Board 2019

act for some litigants on a *pro-bono* basis<sup>5</sup>. However, the high costs of litigation are caused in part by the structure of our Courts and the operation of the rules<sup>6</sup>. Should reform be introduced as envisaged by the Report on the Review of Administration of Civil Justice, considerable efficiencies and ultimately costs savings may be achieved.

Section 150 of the 2015 Act commenced on 7 October 2019. This provides for a very detailed legal costs framework approach, overly prescriptive perhaps as evidenced by the difficulties being encountered by the profession in implementing the terms of Section 150.

### **3. The standard of education and training for persons admitted to practise**

The DSBA is committed to improving the training of solicitors – some of the improvements we recommended in our 2018 Submissions were adopted in the Report of the Authority published in September 2018.

Currently there are three components for persons to complete in order to qualify as solicitors – they must reach an academic standard i.e., in most cases have completed an undergraduate degree and subsequently sit and pass the Law Society FE1 examination; they must undergo skills training currently provided solely by the Law Society of Ireland through two courses, PPC1 & PPC2; and finally, they must complete a period of clinical legal training – that is working as a trainee in a law firm. The legal training required to become a solicitor is a long process, as well as being expensive for both the individual and the training law firm.

It has been generally accepted by all concerned that PPC1 & PPC2 should be fused into one PPC course, to the intent of reducing both the legal training time period and the related cost of training. Indeed the Law Society adopted in 2019 a regulation effective 1<sup>st</sup> January 2020 to allow for such course fusion. However as of January 2021 no such fusion has been implemented.

The Authority's 2020 Report – Pathways to the Professions, recommended a new statutory framework for legal training which would provide a standard of education and competence which will be benchmarked against a competency framework. This is a welcome development as it will ensure outside accountability and quality assurance in respect of standards of training and competence. This may however take some time to put in place especially given that the framework would necessitate legislative change.

In England and Wales, the Solicitors Regulatory Authority has recently announced the commencement in September 2021 of their new framework for legal standard education. This will be an examination (SQE), (a style similar to the New York Bar exam) along with assessment of certain legal skills. In addition, the student will need to show that they have gained practical legal experience through placement (although not necessarily *qua* trainee solicitor) with an office providing legal services (the definition being wide).

This style of training may ultimately be quicker, less costly and more competitive than the current Irish standard. Given that it is not yet commenced it is not possible however to say

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<sup>5</sup> See PILA run by FLAC which provides a referral scheme for pro-bono work

<sup>6</sup> See Report on Review of Administration of Civil Justice

what the effect of such method of training will have on outcomes for newly qualified solicitors in that jurisdiction, and whether instructive or otherwise for this jurisdiction<sup>7</sup>.

**4. The extent to which the admissions policies of the legal professions are consistent with the public interest in ensuring the availability of legal services at a reasonable cost, taking into account the demand for services and the need to ensure adequate education and training standards for persons admitted to practise.**

Legal education in Ireland in the short to medium term is about to undergo a significant change in its definition, structure and delivery through the proposed establishment of a Legal Practitioner Education and Training Committee under the auspices of the Authority.

That said, the cost of legal education is only one aspect of ensuring the availability of legal services at a reasonable cost. As mentioned above, for the past 20 years or so the numbers qualifying as solicitors (apart from those transferring from the bar or from other jurisdictions) has been fairly consistent.

In terms of barriers to entry, legal training is expensive and takes a long time – but in that Ireland may not be viewed as much different from other developed economies.

That said, fixed overheads that a law firm has to bear just to be licensed are significant considering the high cost of professional indemnity insurance, practicing certificates and the cost of statutory and professional compliance. This may well affect the availability and cost of legal services far more than the education and training costs of a newly qualified solicitor.

Of overall importance is the standard of the persons entering into the profession to ensure that they are competently trained and have the skills required in order to serve the public.

**5. The impact of the Covid-19 pandemic of 2020 and Brexit on the above matters**

**(A) Covid-19**

The restrictions on work and movement have meant huge changes for solicitors in their everyday work. Many solicitors are now meeting their clients on-line or conducting telephone appointments and are working from home.

It is nearly impossible however to conduct litigation without the Courts sitting in the usual way. There is no substitute for courts hearing oral evidence and given the lengthy period of restrictions required in order to combat Covid-19, it is safe to say that there will be a large backlog of cases when restrictions are lifted and society returns to “normal”.

The changes forced by the pandemic to the operation of the Courts Service have created some helpful innovations. The Chief Justice, Mr. Justice Frank Clarke, noted on 22<sup>nd</sup> July 2020 at the launch of the Courts Services 2019 Report that “*the thinking, planning and actions of the Courts Service has developed five years over five months*”.

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<sup>7</sup> See Law Society of England and Wales Gazette, 9<sup>th</sup> February 2021 which cautioned that SQE training may not cut the costs of entry into the profession “*New Super Exam fails to drive down fees at ULaw*”.

An example of this would be the litigation efficiencies gained by remote hearing of, say, civil motions in the High Court or ruling of Judicial Separation/Divorce in the Circuit Court. For the Court, the books are lodged well in advance of the hearing of the Motion and not simply handed up on the day. For the solicitor, he/she is given a time slot in which the Motion will be heard and can access the Court remotely via a video link from his/her office. Any agreement to compromise the Motion can be emailed in advance to the Court and the Order made on consent rather than taking up Court time.

These developments are most welcome and it has been of particular benefit to those cases suitable for remote hearing and for the litigants to be able to move the matters on during the pandemic.

Should other court jurisdictions take up a remote hearing option on certain “paper-based” motions, over time, this will lead to further costs savings and efficiencies.

The future appears to be that working outside of the office will be a factor for most jobs in the economy, with solicitors being no different in that regard. Due to the restrictions imposed by the pandemic there is particular focus on the high end technologically driven provision of legal services. Consequently, the provision of legal services through a physical office with all staff in attendance may well become a thing of the past.

Training for solicitors during Covid-19 may be more difficult than usual, especially in respect of litigation. With most trainee solicitors working from home, they are losing an aspect of the practical “on the job” training which is so beneficial. That said, given the severity of the situation forced on us by the pandemic there appears to be no other alternative.

## **(B) Brexit**

The changing economic and financial scenario in Ireland will affect and impact on demand, ability of clients to pay and the incentive for students to enter into the profession. In that regard the impact of Brexit on legal services in Ireland is much dependent on the economic impact of Brexit on Ireland, presumed by all to be in the negative.

Saying that the legal uncertainties which Brexit is now likely to give rise to in cross Ireland/UK trade and other matters may in turn generate significant (new) work for solicitors and across a broad spectrum e.g. Brussels Lugano, Enforcement of Judgments, Family Law, European Arrest Warrants, Financial Services Authorization as well as trade law etc.

For many years Irish Solicitors and those qualifying in England and Wales have had the benefit of a reciprocal arrangement in being admitted in the other’s jurisdiction – through the EU Directive 2005/36/EC and through the arrangements made between the SRA and the Law Society of Ireland. It remains to be seen whether that understanding will continue now that the United Kingdom has left the European Union and given the changes that will be imposed on solicitor training in England and Wales with the commencement of the SQE.

## **CONCLUSION**

For now we do not see any drastic change being required to the admission policies in Ireland for solicitors. In that regard we await developments on two key areas – the legal education framework and the fixed costs of practice. Improving the former and reducing the latter would be of significant benefit to solicitors and to users of their services.

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